

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVIE L. JONES, JR.,

Petitioner,

Case No. 1:04-cv-309

v.

Hon. Wendell A. Miles

KURT JONES,

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. The court dismissed petitioner's habeas action. This matter is now before the court on petitioner's motion for a certificate of appealability (docket no. 49).

Under the amended provisions of the Habeas Corpus Act, a petitioner may not appeal in a habeas case unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1). Rule 22 of the Federal Rules of Appellate Procedure extends to district judges the authority to issue a certificate of appealability. FED. R. APP. P. 22(b). *See Lyons v. Ohio Adult Parole Auth.*, 105 F.3d 1063, 1073 (6th Cir.1997). Under 28 U.S.C. § 2253(c)(2), the court must determine whether a certificate of appealability should be granted. A certificate should issue if petitioner has demonstrated a "substantial showing of a denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(2).

This Court denied petitioner's application on both procedural grounds and on the merits. Petitioner seeks a certificate of appealability for all of the issues raised in his petition. "When the district court denies a habeas petition on procedural grounds without reaching the

prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, [1] that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and [2] that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Both showings must be made to warrant the grant of a certificate. *Id.* at 484-85. To warrant a grant of the certificate after considering the constitutional claims on the merits, “petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* at 484.

Applying these standards, the court finds no basis for issuance of a certificate of appealability. Petitioner has not pointed to any flaw in the court’s reasoning or any issue of fact or law overlooked in the adjudication of his petition. For the reasons expressed in the magistrate judge’s report and recommendation, and the court’s order adopting the report and recommendation, the court concludes that reasonable jurists could not find that this court’s denial of the petition was debatable or wrong.

Accordingly, petitioner’s motion for a certificate of appealability is **DENIED**.

IT IS SO ORDERED.

Dated: October 2, 2007

/s/ Wendell A. Miles
Wendell A. Miles
Senior U.S. District Judge